

No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

JUAN JOSE SALAZAR, individually and as class
representative, et al.,

Petitioners,

vs.

CITY OF MAYWOOD, on its own behalf and as
representative of a class of defendants; et al.,

Respondents.

*On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May police punish people for alleged criminal offenses by “forfeiting” their property, without advising them of the alleged offense, without providing notice of any right to challenge the forfeiture, and where the only “hearing” is an informal opportunity to speak with an employee of forfeiting agency?

2. May circuit courts of appeal decline to consider issues presented, without depriving litigants of their right to appeal, and due process of law?

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

The parties to the proceeding in the court whose judgment is sought to be reviewed are:

Juan Jose Salazar, Ricardo Castillo, Efrain Ruiz, Ruben Chavez, Arturo Cordero, Armando Gonzalez, Virginia Jauregui, Adolpho Lopez, Brenda Martinez, Reyna Perez, Maria Ramirez, Aurelio Retana, Jose Rodriguez, Denise Rucker, Jesus Tejada, Bacilia Tirado, Armando Vasquez, Victor Galviz; Laurencio Marin; Vincent Soltero; Juan Renteria, plaintiffs, appellants below, and Petitioners here.

City of Maywood, City of Los Angeles, County of Los Angeles City of Escondido, City of Long Beach, City of Ontario, County of Riverside, City of Riverside Mike Brown; Dale Bonner; Sunne Wright Mcpeak, Joseph A. Farrow, defendants, appellees below, and respondents here.

No corporations other than municipal corporations are involved in this proceeding.

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OPINIONS BELOW

The Ninth Circuit's memorandum opinion, the subject of this petition, is at Appendix [Apx] **A5-A11** and may be found at 414 Fed.Appx. 73, 2011 WL 477686 (2011). The district court's unpublished order dismissing some of Petitioners' claims is at **Apx A12-A27**, and the district court's unpublished order granting summary judgment is at **Apx A8-A23**.

JURISDICTION

The Ninth Circuit filed its memorandum opinion on February 8, 2011. **Apx A5**. Petitioners timely petitioned for rehearing, and on May 24, 2011, the Ninth Circuit denied the petition. **Apx A1**. This Court has jurisdiction under 28 U.S.C. §1254(1) (2006) to review on writ of certiorari the Ninth Circuit's February 8, 2011 decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

Petitioners brought the underlying action under 42 U.S.C. § 1983. See **Apx B1** for text.

Petitioners alleged Respondents violated their rights under the United States Constitution, Fourth, Fifth, Sixth and Fourteenth Amendments. See **Apx B1-B2** for text of Amendments.

Respondents impounded Petitioners' vehicles for thirty days under the purported authority of California

Vehicle Code § 14602.6(a)(1) and California Vehicle Code § 14604 (a). Respondents contended that the impoundments were justified as punishment for violating California Vehicle Code § 14604(a). See **ApX B3-B12** for text of §§ 14602.6, 14604.

STATEMENT OF THE CASE

I. Reasons for Granting Certiorari.

California law enforcement agencies have seized and continue to seize thousands of vehicles, impounding them for thirty days to punish the owners — without notice or hearing.¹

Many if not most owners permanently lose their vehicles because they do not have the money to get them back.²

¹ At just one of Los Angeles County's twenty-four Sheriff's patrol stations, Carson, "approximately 300 vehicles are impounded each month." *Navarro v. County of Los Angeles*, 2006 WL 1320895, *1 (2006). According to California's Attorney General, "Between February 1, 2002 and April 30, 2007," the tiny Maywood Police Department "towed and impounded 17,773 vehicles." *In the Matter of the Investigation of the City of Maywood Police Department*, Attorney General's Final Report, March 2009, at 11 ("Maywood Report"). May be found at: http://ag.ca.gov/cms_attachments/press/pdfs/n1722_maywoodreport.pdf

² Of twenty Petitioners, eight permanently lost vehicles: Armando Gonzalez (City of Long Beach); Ricardo Castillo (City of Maywood); Victor Galaviz (had two incidents and lost both cars) (City of Maywood); Basilia Tirado (City of Riverside); Jesus Tejada (County of Los Angeles); Ruben Chavez (State of California);

Owners are given no notice that they may challenge the 30-day *impoundments*.

Owners are only notified that they may challenge the “storage,” *i.e.*, the *initial seizure*.

The only “hearing” is a chance to speak to an employee of the law enforcement agency. The only requirement for the “hearing” is that the employee be someone other than the one who seized the vehicle.³ There is no record of the “hearing,” nor of the decision, and no review.⁴

The impounding agencies profit from the 30-day impoundments.⁵

Adolfo Lopez (State of California); Laurencio Marin (City of Los Angeles).

³ California Vehicle Code § 22852 (c).

⁴ *See Navarro*, 2006 WL 1320895 (2006) (“His storage hearing consisted of a ten-minute conversation with Deputy Green.” “[N]o written records are kept. . . . No notice is sent after an impound hearing stating the reasons for denial of release of a vehicle.”).

⁵ The small city of Escondido, located near Mexico in San Diego County, required tow yards to pay \$35,000 per year for the privilege impounding vehicles. To justify the \$35,000 fee, Escondido underscored the profits tow yards could realize, since forty-five percent of the vehicles seized were sold at lien sales. See Petitioners’ Ninth Circuit Opening Brief [“AOB”] 34, Petitioners’ Ninth Circuit Excerpt of Record [“PER”] 480.

According to California’s Attorney General, “The cities [Maywood and Cudahy] earned a minimum of \$200 per impound.

Respondents contended that the 30-day impoundments were to punish Petitioners for the criminal offense of allowing unlicensed drivers to drive their cars, and that Petitioners were not entitled to notice that they could challenge the impoundments, and were properly presumed guilty.

This revenue appears to have been the primary motivation for impounding such an extraordinary number of vehicles." Maywood Report at 11. The now infamous administrators of the City of Bell charged \$400 to release a vehicle subjected to a 30-day impoundment. PER 3313 & 3394.

See also "Maricopa slows to a crawl," *Los Angeles Times*, July 4, 2011:

Civil liberties lawyers charge that police target motorists they figure are farmworkers, knowing that some are undocumented immigrants without driver's licenses. When vehicles are towed and stiff fines go unpaid, the city sells them and gets 25% of the proceeds, the grand jury noted.

"Maricopa has been a shining example of impoundments gone wrong," said Jennie Pasquarella, an attorney with the ACLU of Southern California. "They're essentially creating a racket to steal people's cars."

. . . Blaming past administrators for failed leadership, the grand jury said the city was deep in debt, kept cash in an unlocked desk, maintained poor records, scraped to pay everyday bills and rarely sought legal advice. At one point, the city borrowed from a private party — later revealed to be a towing company — just to meet payroll.

II. Background and Lower Court Proceedings.

Petitioners, the representative plaintiffs in a putative class action against every law enforcement agency in California, are the owners (not the drivers) of vehicles which Respondents, relying on California Vehicle Code §§ 14602.6 (a) and 14604 (a), seized and impounded for thirty days. Respondents are the largest law enforcement agencies in California.

As one example, the California Highway Patrol impounded Ruben Chavez's 1990 Ford Thunderbird for thirty days after stopping Mr. Chavez's son, a migrant worker with a current Wisconsin license, for tinted windows. The car was parked legally and safely. A cousin was about ten minutes away and could have gotten the car. By the time the thirty-day impoundment was up, the cost of getting his Thunderbird back was about \$2,000, which Mr. Chavez did not have, so he lost his car. (AOB 23, citing references to the record).

According to Respondents: "Section 14602.6 imposes a presumptive 30 day impoundment penalty against those who commit the crime of driving while unlicensed or allowing other unlicensed people to drive their vehicles."⁶ Counties' Ninth Circuit Brief ["CB"]

⁶ Vehicle Code §14604, by its terms ("knowingly allow") is not a strict liability offense. See *Snyder v. Enterprise Rent-A-Car Co. of San Francisco (ERAC-SF)*, 392 F.Supp.2d 1116, 1125-26 (N.D.2005); *Shifflette v. Walkup Drayage & Warehouse Co.*, 74 Cal.App.2d 903, 906-08 (1946).

56.⁷ See also **Apx A15**.

The district court dismissed some of Petitioners' claims, **Apx A58-59**, and, accepting Respondents' arguments, found that these 30-day impoundments were "civil forfeitures for violations of two California crimes," granted summary judgment as to the rest. **Apx A15-17**. The Ninth circuit affirmed in a brief memorandum. **Apx A5-A11**.

The Ninth Circuit did not address Petitioners' contention that it was unconstitutional to take their property, without notice or hearing, to punish them for committing alleged crimes. It ruled that these 30-day impoundments were in accord "with the California legislature's determination that such a temporary forfeiture is warranted to protect Californians from the harm caused by unlicensed drivers—a determination we have no basis to reject." **Apx A4-A5**. The Ninth Circuit cited no authority and did not explain how it

⁷ Respondents initially "attempted to justify impoundment of Plaintiffs' vehicles solely under the community caretaking doctrine." **Apx A14** (SJ Order). The district court rejected Respondents' argument, finding that "Clearly, § 14602.6 exceeds the constitutionally permissible boundaries established by the community caretaking doctrine." **Apx A48**. After the district court rejected Respondents' non-punitive community-caretaking argument, Respondents reversed positions, and successfully argued that the 30 day impoundment is *not* a temporary hold based on the community caretaking doctrine but "a valid administrative penalty permitting temporary civil forfeiture for violations of two California crime: (1) driving without a license prohibited by §12500 and classified as a misdemeanor . . . and (2) knowingly allowing an unlicensed person to drive your car, as prohibited by §14604 and classified as a misdemeanor . . ." **Apx. A15**.

reached this conclusion.

Petitioners' due process claims were based on the absence of adequate notice and the lack of fair hearings.

Petitioners were not informed that their vehicles were impounded (or "temporarily forfeited") to punish them for their alleged commission of any offense, nor is forfeiture a prescribed punishment for a violation of Vehicle Code § 14604(a).⁸

Petitioners were not informed that they had the right to a hearing to contest the 30-day impoundments of their vehicles.⁹

⁸ California Vehicle Code § 40000.11 (m) makes violation of Section 14604 a misdemeanor. Under California Penal Code § 19 the penalty is a \$1000 fine and/or six months in a county jail.

⁹ Respondents used a document known as the "CHP-180 half-sheet" to notify Petitioners of the 30-day impoundments. ("CHP" stands for California Highway Patrol.). See **ApX D1** for a copy of the CHP 180 form.

The CHP-180 said nothing about the right to challenge the 30-day impoundment, nor of any right to present "mitigating circumstances." The CHP-180 half-sheet only notified owners of their right to contest the "storage" of their vehicles, pursuant to California Vehicle Code § 22852. See **ApX D1**.

A "storage" is different than an "impoundment." The owner can get his "stored" vehicle back immediately. California Vehicle Code § 22651 (p). Vehicles temporarily "removed" under the various subsections of Vehicle Code § 22651, are "stored," whereas vehicles impounded for thirty days under Vehicle Code § 14602.6 (a) are "impounded." The CHP-180 itself recognizes this

Petitioners were not informed of their theoretical right to present evidence of “mitigating circumstances.”¹⁰ Nor were Petitioners informed of what Respondents considered “mitigating circumstances,” which varied greatly from agency to

critical difference, as does California case law. *See California Highway Patrol v. Superior Court*, 162 Cal.App.4th 1144, 1149 (2008) (“Officer Machado prepared a CHP-180 vehicle report form, indicating St. Pierre’s vehicle would be ‘stored’ (rather than ‘impounded’ or ‘released’) pursuant to section 22651, subdivision (h)”).

The CHP-180 and the hearing required by Vehicle Code § 22852 were designed to comply with the Ninth Circuit’s requirement that owners of vehicles removed and temporarily stored for non-punitive, community-caretaking purposes (e.g. illegal parking) be given a rudimentary opportunity to dispute the validity of the storage. *See Stypmann v. City and County of San Francisco*, 557 F.2d 1338, 1343 (9th Cir. 1977); *David v. City of Los Angeles*, 307 F.3d 1143, 1146 (9th Cir. 2002).

¹⁰ California Vehicle Code § 14602.6 (d)(A-E) establishes innocent owner defenses: Impounding agency must release the vehicle prior to the end of the thirty days’ impoundment if The vehicle was stolen, when the vehicle was subject to bailment and driven by the unlicensed employee of a business, including a parking service or garage, when the driver’s license was suspended or revoked for a non-driving offense (e.g., failure to pay child support), when the vehicle was seized for an offense that did not authorize the seizure of the vehicle, and when the driver (not the owner) gets a license and insurance.

In addition, California Vehicle Code § 14602.6 (b) requires the impounding agency to consider “mitigating circumstances” justifying the release of the vehicle prior to the end of the thirty days impoundment. A judicially recognized “mitigating circumstance” exists where the owner did not know the driver’s license was suspended or revoked. *Smith v. Santa Rosa Police Department*, 97 Cal.App.4th 546 (2002).

agency. **Apx. D1** (CHP 180 form); PER 612-616.

As noted above, Petitioners also challenged the due process adequacy of the “storage” “hearing.”

Petitioners also seek review of the Ninth Circuit’s refusal to consider Petitioners’ Fifth Amendment takings claims.

In some cases, Respondents impounded vehicles for thirty days because the driver had a license from outside California, or an expired license.¹¹ One of eight such Petitioners is Mr. Chavez, who lost his 1999 Ford Thunderbird, as described above.

Respondents argued (successfully in the district court) that expired licenses and licenses from other states (if the driver had been in California for more than ten days) were the same as licenses suspended or revoked for driving-related reasons (like drunk driving) because they were “revoked by operation of law.” See Counties’ Brief (“CB”) 52.

¹¹ California Vehicle Code § 310 defines a license from outside California to be a “license.” Under California Vehicle Code § 12505 (c), a license from outside California is valid in California, and remains valid until ten days after the driver establishes “residency” in California. Under California Vehicle Code § 12505 (a) (1), “residency” is where a person has his “true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent.” A person may live in California for years without establishing “residency.” See *generally* 67 Ops. Cal. Atty. Gen. 313, 1984 WL 162069.

The Ninth Circuit rejected Respondents' contention. It found such 30-day impoundments legally unauthorized. **Apx A4.**

Although the Ninth Circuit agreed with Petitioners' contention that such 30-day impoundments were unauthorized, it declined to address Petitioners' takings claims, stating that they were "not supported by any developed argument on appeal and are therefore not properly before us." **Apx A7.** In fact, Petitioners clearly raised their takings claims. **Apx C1-C7.** Consequently, the Ninth Circuit deprived Petitioners of a remedy for the unlawful taking of their property.

III. The Ninth Circuit's Decision Conflicts with this Court.

A. The Ninth Circuit Refuses To Follow The Court's Precedent that Civil, *in Rem*, Forfeitures May Not Be Used to Punish a Person for an Alleged Criminal Offense.

The issues are fundamentally important and immediately impact thousands of people. The Court's review is required to remedy lower court confusion regarding the circumstances under which government may "forfeit" private property. The Ninth Circuit's failure even to try to justify Respondents' wholesale takings with any reasoned analysis demonstrates the critical need for further guidance.

No Justice has ever found that civil, *in rem*, forfeitures may be imposed for the purpose of punishing individuals. *See, e.g., Bennis*, 516 U.S. at 448-449 (majority opinion); 516 U.S. at 456 (“And if the forfeiture of the car here . . . can appropriately be characterized as ‘remedial’ action, then the more severe problems involved in punishing someone not found to have engaged in wrongdoing of any kind do not arise.”) (Thomas, J., concurring); 516 U.S. at 464 (“The State attempts to characterize this forfeiture as serving exclusively remedial, as opposed to punitive, ends, because its goal was to abate what the State termed a ‘nuisance.’”) (Stevens, Souter, Breyer, JJ. dissenting); 516 U.S. at 472 (“it seems to me inaccurate, or at least not well supported, to say that the owner's personal culpability was part of the forfeiture rationale”) (Kennedy, J., dissenting); *United States v. Ursery*, 518 U.S. 267, 293 (1996) (“civil *in rem* forfeiture is not punishment of the wrongdoer for his criminal offense”) (Kennedy, J., concurring); *United States v. Bajakajian*, 524 U.S. 321, 331 (1998) (“Traditional *in rem* forfeitures were thus not considered punishment against the individual for an offense.”) (Thomas, J.).

If police may summarily punish alleged offenders by simply taking their property, constitutional protections are largely eliminated and innocent people are wrongly punished. In California alone, thousands have been wrongly punished and this wholesale theft of private property continues unabated.

There are good reasons to strictly limit the government's ability to take property. “Our social system rests largely upon the sanctity of private

property; and that state or community which seeks to invade it will soon discover the error in the disaster which follows.” *City of Knoxville v. Knoxville Water Co.*, 212 U.S. 1, 18 (1909); *see also Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972) (“a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other”); *Chicago, Burlington & Quincy R.R.*, 166 U.S. 226, 236 (1897) (“Indeed, in a free government almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen”); John Locke, *The Second Treatise on Civil Government* ¶ 123-42 (cir. 1689); Leonard W. Levy, *Original Intent and the Framers' Constitution* 276-77 (1988); Charles A. Reich, *The New Property*, 73 Yale L.J. 733, 771-74 (1964) (an individual's freedom and security depend on his ability to protect property from irrational or procedurally unfair government interference).

The Ninth Circuit's muddled thinking is somewhat understandable. Courts have long struggled with reconciling the punitive effects of civil, *in rem*, forfeitures with the constitutional protections afforded both the innocent and those alleged to have committed criminal offenses — and property owners have generally lost. *See, e.g., Bennis v. Michigan*, 516 U.S. 442, 448-449 (1996) (five opinions). Forfeiture law, because based in part on historical fictions, invites confusion and is a tempting shortcut for government looking for revenues and cheap and easy ways to punish individuals without complying with basic

constitutional guarantees.¹²

That said, the Ninth Circuit's ruling is totally unprecedented and indefensible. It dramatically expands government's right to take private property, in violation of historic principles, without the least semblance of rudimentary due process, while not even trying to justify what it has done.

Because the Ninth Circuit did not explain its ruling, nor cite any authority, nor respond to Petitioners' request for rehearing, one assumes it simply accepted Respondents' remarkable contention that "Section 14602.6 imposes a presumptive 30 day impoundment penalty against those who commit the crime of driving while unlicensed or allowing other unlicensed people to drive their vehicles." CB 56.¹³

¹² See, Cheh, Mary M., *Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction*, 42 *Hast.L.J.* 1325, 1329 (1991) ("Police and prosecutors have embraced civil strategies not only because they expand the arsenal of weapons available to reach antisocial behavior, but also because officials believe that civil remedies offer speedy solutions that are unencumbered by the rigorous constitutional protections associated with criminal trials, such as proof beyond a reasonable doubt, trial by jury, and appointment of counsel."); Pratt, George C. & Petersen, William B., *Civil Forfeitures in the Second Circuit*, 65 *St. John's L.Rev.* 653, 654-55 (1991).

¹³ As noted above, the district court ruled that 30-day impoundments were not justifiable under the community-caretaking doctrine, **Apx A48**, and Respondents thereafter took the position that "[t]he 30 day presumptive impoundment is *not* a temporary hold based on the community caretaking doctrine but

a *punishment* for a violation of California law.” PER 1040:8-10 (italics added).

Moreover, a determination that the community-caretaking doctrine permits long-term deprivations of lawfully-owned and possessed property (like automobiles) to deter future unlicensed driving and thereby protect the community, would be unprecedented. The Court has never authorized government to confiscate lawfully-possessed private property under the community-caretaking doctrine. It has authorized short-term community-caretaking seizures only where there was an immediate need for intervention. *Colorado v. Bertine*, 479 U.S. 367 (1987) (vehicle towed after driver arrested for driving under the influence) *South Dakota v. Opperman*, 428 U.S. 364 (1976) (removal of illegally parked vehicle for efficient movement of traffic); *Cady v. Dombrowski*, 413 U.S. 433 (1973) (vehicle disabled as result of accident and constituted a nuisance along highway and driver, being intoxicated and later comatose, could not make arrangements to have the vehicle towed and stored).

A determination that the community-caretaking doctrine permits long-term deprivations would be in conflict with existing authority. *State v. Gonzales*, 236 Or.App. 391, 402, 236 P.3d 834, 840 (Or. App. 2010) (“we reject the state's suggestion that leaving the car accessible to defendant would have created a threat to public safety. That contention amounts to little more than speculation that defendant would have driven the car again and would not have been deterred by the citation for driving while suspended, which carried a fine of up to \$720.”). Indeed, it is in conflict with Ninth Circuit precedent which, one assumes, the courts below followed. *Miranda v. City of Cornelius*, 429 F.3d 858, 866 (9th Cir. 2005) (“the deterrence rationale is incompatible with the principles of the community caretaking doctrine”).

The Ninth Circuit did not try to justify these 30-day impoundments under the Court’s civil, *in rem*, forfeiture jurisprudence, and could not have. Historically, the Court has required that forfeiture statutes be strictly construed against the government. *See United States v. One 1936 Model Ford V-8*

The Ninth Circuit's idea that police may summarily punish people, without bothering with fair procedures, much less criminal procedures — so long as the punishment merely involves the taking of property — may stem from the Court's acceptance that civil *in rem* forfeitures may permissibly have a punitive effect, without violating double jeopardy protections or requiring criminal procedures. See *Austin v. United States*, 509 U.S. 602 (1993).

The Court has never gone remotely as far as the Ninth Circuit did here. Those forfeitures which the Court has sanctioned, despite punitive characteristics, have been considered civil, and *in rem*. The primary purpose was *not* to punish the property's owner: “[T]he conduct of the property owner was irrelevant; indeed, the owner of forfeited property could be entirely innocent of any crime.” *United States v. Bajakajian*, 524 U.S. 321, 330 (1998) (Thomas, J.)

Bennis, 516 U.S. 442, itself a very close case, was an equitable proceeding in which a court, pursuant to an explicit state statutory scheme, ordered a vehicle forfeited as a public nuisance. *Bennis*, 516 U.S. at 443. The Court found that the forfeiture was justifiable because it satisfied traditional forfeiture principles:

DeLuxe Coach, 307 U.S. 219, 226 (1939); *Farmers' & Mechanics' Nat. Bank v. Dearing*, 91 U.S. 29, 33-35 (1875).

Respondents denied that section 14606.2 authorized forfeiture. See AOB 21 and Exhibit A thereto (Counties' SJ Reply 6:19 (“No vehicle owned by a single Plaintiff was forfeited and no such contention was raised by defendants.”)).

“ ‘The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing.’ ” *Bennis*, 516 U.S. at 998, quoting *The Palmyra*, 25 U.S. 1, 14 (1827) (Story, J.). Had the Court concluded the forfeiture was primarily for the purpose of punishment, it would have been found unconstitutional.¹⁴

¹⁴The major focus of *Bennis* was to consider whether civil, *in rem*, forfeitures could be used to take the property of an *innocent* owner. Michigan did “not need to prove that the owner knew or agreed that her vehicle would be used in a manner proscribed by § 600.3801 when she entrusted it to another user.” 516 U.S. at 445. Mrs. Bennis “did not know that her car would be used in an illegal activity that would subject it to forfeiture.” 516 U.S. at 449.

The Michigan forfeiture law was considered civil and *in rem* (and not punitive), at least in part, because it did *not* provide an innocent-owner defense. An innocent-owner defense would have indicated that the forfeiture was *not* civil and *in rem*, but criminal and *in personam*. “[I]f a forfeiture statute allows such a defense, the defense is additional evidence that the statute itself is ‘punitive’ in motive.” *Bennis*, 516 U.S. at 451-52, citing *Austin*, 509 U.S. at 617-618.

Vehicle Code § 14602.6 (d)(A-E) expressly provides for innocent-owner defenses, as does *Smith*, 97 Cal.App.4th 546. Consequently, even if the courts below were free to ignore Respondents’ position that these 30-day impoundments are not “based on the community caretaking doctrine but a *punishment* for a violation of California law.” PER 1040 (6:8-10) (*italics added*), a “penalty against those who commit the crime of driving while unlicensed or allowing other unlicensed people to drive their vehicles,” CB 56, one would still be faced with strong evidence that Respondents are correct: Impounding Petitioners’ vehicles was intended to summarily punish them for presumed violations of Vehicle Code § 14604 (a), and was therefore unconstitutional.

Here, Respondents rest their case on the argument that these “temporary forfeitures” **are** punitive in purpose and effect. Consequently, they are unconstitutional.

B. The Ninth Circuit Ignores The Court’s Procedural Due Process Requirements.

Whatever the rationale for taking their property, Petitioners were at least entitled to due process of law.

The notice and opportunity to be heard California provides is ridiculously inadequate.

Petitioners did not even get the process California accords non-criminal parking tickets. The Ninth Circuit refused to follow *Mathews v. Eldridge*, 424 U.S. 319 (1976), and irrationally found that Petitioners were accorded due process because they were treated just like owners whose vehicle were taken for a few hours for illegal parking.

The Ninth Circuit rejected Petitioners’ contentions that the notice was inadequate because it found the *timing* similar to that approved in *Miranda*, 429 F.3d 858 and *Scofield v. City of Hillsborough*, 862 F.2d 759 (9th Cir. 1988). **Apx A5-A6** (Mem 4).¹⁵

¹⁵ Moreover, the vehicle seizures in *Miranda* and *Scofield* were categorically different. Both *Miranda* and *Scofield* involved very short, non-punitive, seizures under the community-caretaking doctrine — not 30-day impoundments, much less impoundments intended to punish owners for alleged criminal violations.

The Ninth Circuit’s analysis makes no sense and ignores the Court’s precedents. Timing was irrelevant to Petitioners’ contentions. The deficiencies were that the notices did not advise Petitioners what they were charged with, did not inform them they had a right to a hearing to challenge the **30-day impoundments**, nor inform them that they could present “mitigating circumstances.”¹⁶

In addition to Sixth Amendment guarantees, the Court has long recognized that “[n]otice, to comply with due process requirements, must . . . ‘set forth the alleged misconduct with particularity.’” *In Re Gault*, 387 U.S. 1, 33 (1967). “No principle of procedural due process is more clearly established than that notice of the specific charge.” *Cole v. State of Ark.*, 333 U.S. 196, 201 (1948). “Conviction upon a charge not made would

Police had the Mirandas’ vehicle towed because Mrs. Miranda was driving without a license. 429 F.3d at 860-861. Mr. Miranda retrieved the vehicle “[o]n the morning of the next day.” 429 F.3d at 861. (The Ninth Circuit found the seizure unlawful because there was no justification for it under the community-caretaking doctrine.)

Scofield’s unregistered vehicle was towed from a no-parking zone. “Later that same day, . . . the HPD authorized the release of his car.” *Scofield*, 862 F.2d at 761-762.

¹⁶ Petitioners never claimed that notice or a hearing was required before the initial removal of the vehicle, if the removal was justified under the community-caretaking doctrine, *i.e.*, because the vehicle could not be safely and lawfully parked and there was not a licensed driver available, as authorized by *Opperman*, 428 U.S. 364. Nor did Petitioners contend that the timing of the notice and hearing to contest the lawfulness of the initial seizure was deficient.

be sheer denial of due process.' ” *Thompson v. City of Louisville*, 362 U.S. 199, 206 (1960). Even where the governmental interest is enormous, the accused is “entitled at a minimum to notice of the Government's claimed factual basis . . . and to a fair chance to rebut it before a neutral decisionmaker.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 528-529 (2004) (Souter, Ginsberg, J., concurring in part, dissenting in part).

Although one is not required to prove one's innocence before being entitled to due process, Petitioners had absolute defenses to the *impoundments*. Eight drivers, including Mr. Chavez's son, had licenses and the vehicles were not lawfully subject to 30-day impoundment, as even the Ninth Circuit recognized. Even if the initial seizures had been lawful, the 30-day *impoundments* were not.¹⁷

The Ninth Circuit similarly rejected Petitioners' objections to the due process protections afforded by the so-called “hearings.” In doing so, the Ninth Circuit refused to consider the factors required by *Mathews*, 424 U.S. 319. Instead the Ninth Circuit ruled the hearings provided due process because they were just like those provided owners whose vehicles had been taken for a few hours for illegal parking. The only

¹⁷ Petitioners also had “mitigating circumstances.” For example, Mr. Tejada did not know his son's license had been suspended, a judicially recognized “mitigating circumstance.” *Smith v. Santa Rosa Police Department*, 97 Cal.App.4th at 568. Mr. Salazar's daughter had a valid temporary license, was stopped for a non-driving-related offense (tinted windows), had driven only a short distance from home (four blocks), and Mr. Salazar himself had a license, and his car was fully insured.

authority the Ninth Circuit relied on was *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320 (9th Cir. 1982) (“The fact that hearing examiner is employed by the agency, absent more, does not create a due process violation.”). **Apx A5-A6.**

The Ninth Circuit’s reliance on *Goichman* violated *Mathews*. *Goichman*, like *Miranda* and *Scofield*, addressed a categorically different type of seizure. *Goichman*’s vehicle was towed for illegal parking. “Later that day,” *Goichman* got his car back, upon “payment of \$32.00 in towing charges and \$4.50 in storage charges.” *Goichman*, 682 F.2d at 1322. *Goichman* did not involve a mandatory 30-day impoundment, nor was the removal and storage intended to punish *Goichman* for an alleged criminal offense. Rather, it was for non-punitive, community-caretaking purposes.

By equating 30-day impoundments (which often cause a permanent losses of the vehicle) with short, non-punitive removal and storage, the Ninth Circuit ignored the “ordinary mechanism” the Court uses “for determining the procedures that are necessary to ensure that a citizen is not ‘deprived of life, liberty, or property, without due process of law,’” the test articulated in *Mathews*. *Hamdi*, 542 U.S. at 528-529.

Mathews dictates that the process due in any given instance is determined by weighing “the private interest that will be affected by the official action” against the Government’s asserted interest. *Mathews*, 424 U.S. at 335. Because Petitioners’ “private interest” in not having their vehicles impounded for 30 days was

obviously far greater than was *Goichman's* in losing his vehicle for a few hours, the Ninth Circuit refused to weigh Petitioners' private interests as the Court requires.

It should not be necessary to explain that being deprived of one's vehicle for thirty days is more than thirty times worse than being deprived of it for a few hours. Although the impound fees may be only thirty times greater, the large increase in the cost of recovering one's vehicle may well be so unaffordable (especially for working class individuals), that the result is a permanent loss of the vehicle, and of employment, since "the automobile . . . is a practical necessity in modern life for so many people," *Bennis*, 516 U.S. at 473 (Kennedy, J., dissenting).¹⁸

In addition, the Ninth Circuit completely failed to weigh the Government's interest and the burdens the Government would face in providing greater process, as the Court requires. *Mathews*, 424 U.S. at 335; *Hamdi*, 542 at 529.

Respondents did not even claim that informing Petitioners of what they were charged with and of the availability of a hearing to challenge the 30-day impoundment and of their right to offer "mitigating circumstances" (and of what Respondents considered

¹⁸ Maywood Report at 12 ("The vast majority of the vehicles remained impounded for the full 30 days and incurred storage fees so high that the owners of the vehicles commonly could not afford to pay for the release of their vehicles.").

“mitigating”) would have been at all burdensome. Nor did Respondents claim that providing hearings, such as those accorded trivial parking violations, was too much to ask. This was fundamentally wrong. While ridding the streets of unlicensed drivers may be laudable, “it is equally vital that our calculus not give short shrift to the values that this country holds dear” *Hamdi*, 542 U.S. at 532.¹⁹

The easy availability of a far better process is clear. Providing notice of an owner’s alleged offense, and of the right to challenge the 30-day impoundment and to offer “mitigating circumstances” would not be burdensome.²⁰ Providing a meaningful hearing, of

¹⁹ See “Checkpoint abuses / Cities increasingly using them as money-makers,” *San Diego Union Tribune*, February 17, 2010 (“The Investigative Reporting Program at the University of California, Berkeley, has found that, in 2009, impoundments at checkpoints across the state generated an estimated \$40 million in towing fees and police fines. To give you an idea of just how insidious these schemes are, cities often divide the revenue with towing companies. And while authorities insist that these checkpoints are colorblind, the article notes that cities where Hispanics make up a majority of the population are seizing cars at three times the rate of cities with smaller minority populations.”) . At <http://www.signonsandiego.com/news/2010/feb/17/checkpoint-abuses/> . See also, “Dividing a town in two,” *San Diego Union Tribune*, April 3, 2010, at <http://www.signonsandiego.com/news/2010/apr/03/dividing-a-town-in-two-editorial/>.

²⁰ See *Grayden v. Rhodes*, 345 F.3d 1225, 1244 (11th Cir. 2003) (“To include a one-sentence statement of a tenant’s right to appeal the condemnation order in this notice to vacate would not be burdensome. . . . [T]he City would assume almost no additional financial or administrative burden by providing notice of the right

course, is likely greater than the cost of adding a few more words to Respondents' standard CHP-180 form. But this cost is hardly daunting. Those given routine, non-criminal, parking citations are accorded far greater protection, including notice of the charges, meaningful opportunities to be heard before impartial hearing officers, a record of the decision, and the right to review. See *Love v. City of Monterey*, 37 Cal.App.4th 562, 565-66, 569-72 (1995).

After weighing the competing interests, *Mathews* then contemplates an analysis of "the risk of an erroneous deprivation" and the "probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S., at 335; *Hamdi*, 542 U.S. at 529. The Ninth Circuit refused to consider the risk of erroneous deprivation and the value of additional procedural safeguards.

Here, the "risk of erroneous deprivation" was enormous. People can hardly be expected to defend themselves if they are neither told what the charges are nor that a hearing is available.

The so-called "hearings" were a sham. They had none of the attributes of a hearing (record of proceedings, notice of decision, review), and the "hearing officers" had no qualifications, and were employees of the adversary having "a direct pecuniary interest in the outcome of the proceeding." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55-56 (1993). To boot, Respondents presumed

to a hearing at the same time it provides the notice to vacate.")

Petitioners guilty.

The inadequacy of the process is obvious from its results: as the Ninth Circuit recognized, “hearing officers” routinely approved clearly unjustified 30-day impoundments.²¹

Consequently, it was totally wrong for the Ninth Circuit to ignore *Mathews* and blindly equate these 30-day impoundments with short community-caretaking based removals and storages. The Ninth Circuit’s cavalier refusal to follow the Court’s dictates has resulted in the continued violation of the rights of thousands of people — taking their property without due process of law.

IV. The Ninth Circuit’s Due Process Analysis Is In Conflict With Other Courts of Appeals.

Consideration of recent decisions from other circuits makes doubly plain how out of step the Ninth Circuit is.

The Ninth Circuit’s approval of the penurious

²¹ One would have expected even untrained “hearing officers,” especially those with some familiarity with criminal justice, to have recognized that driving with a still-current but possibly “expired” out-of-state license cannot be equated with a license suspension for drunk driving — as they would the difference between armed robbery and walking outside a crosswalk. Perhaps the “hearing officers” judgment was clouded by the fact that the seizing authority had “a direct pecuniary interest in the outcome of the proceeding.” *James Daniel Good Real Prop.*, 510 U.S. at 55-56.

process California provides is in fundamental conflict with the Second and Seventh Circuits' careful, balanced treatment of similar takings in *Krimstock v. Kelly*, 306 F.3d 40, 49 (2nd Cir. 2002) (Sotomayor), and *Smith v. City of Chicago*, 524 F.3d 834 (Evans), vacated and remanded *sub nom. Alvarez v. Smith*, * U.S. *, 130 S.Ct. 576, 175 L.Ed.2d 447 (2009). It also conflicts with the Eleventh Circuit's due process analysis in *Grayden*, 345 F.3d 1225 (Cox) and *Arrington v. Helms*, 438 F.3d 1336, 1352 (11th Cir. 2006) (Black).

Krimstock and *Smith* concerned forfeiture of vehicles used to commit crimes. *Krimstock* focused on New York City's forfeiture of vehicles driven by drunk drivers. *Smith* was about forfeiture of vehicles involved in certain drug offenses. Here, Respondents "temporarily forfeited" vehicles because they were driven by (allegedly) unlicensed drivers. Mr. Chavez, for example, permanently lost his vehicle because his visiting migrant-farmworker son, who had a current Wisconsin license, drove his car.

Petitioners submit that while California has a important interest in keeping unlicensed drivers off the roads, those interests are no greater than New York's or Chicago's. Not having a license, in contrast to driving drunk, does not necessarily make one a bad driver (especially where getting a license is foreclosed, no matter how good a driver one is). Consequently, Petitioners' due process protections should be at least comparable to those *Krimstock* and *Smith* recognized.

While *Krimstock*, *Smith*, *Grayden*, and

Arrington addressed somewhat different issues, all applied basic due-process analyses the Ninth Circuit refused to consider.

First, in contrast to the Ninth, the Second, Seventh and Eleventh Circuits looked to and carefully applied “the *Mathews* factors: the ‘private interest affected by the official action; the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and the Government’s interest, including the administrative burden that additional procedural requirements would impose.’” *Smith*, 524 F.3d at 837; see *Krimstock*, 306 F.3d at 60-69; *Grayden*, 345 F.3d at 1232-1239.

Second, in applying *Mathews*, *Krimstock* and *Smith* expressly recognized that having an automobile is an important “private interest.” *Krimstock*, 306 F.3d at 44 (“A car or truck is often central to a person’s livelihood or daily activities”); *Smith*, 524 F.3d at 838 (“The private interest involved, particularly in the seizure of an automobile, is great. Our society is, for good or not, highly dependent on the automobile. The hardship posed by the loss of one’s means of transportation, even in a city like Chicago, with a well-developed mass transportation system, is hard to calculate. It can result in missed doctor’s appointments, missed school, and perhaps most significant of all, loss of employment. This is bad enough for an owner of an automobile, who is herself accused of a crime giving rise to the seizure. But consider the owner of an automobile which is seized because the driver-not the owner-is the one accused and whose actions cause the seizure.”). The Ninth

Circuit ignored the importance of vehicles.

Third, the Second, Seventh and Eleventh circuits understood that due process is not a one size fits all standard. “Due process is inevitably a fact-intensive inquiry.” *Krimstock*, 306 F.3d at 51. In particular, *Krimstock* and *Smith* saw that the right to *retain* a vehicle must be analyzed separately from the right initially to seize a vehicle. “Although there is an obvious overlap between probable cause for a seizure and the probable validity of a retention, the two are not necessarily coextensive.” *Krimstock*, 306 F.3d at 49.

Similarly, the Eleventh Circuit recognized that the right to challenge an immediate eviction and the right to challenge an eventual condemnation are not the same. *Grayden*, 345 F.3d at 1230, 1233 (“inherent in the tenants' interest in their uninterrupted occupancy at Lafayette Square is another important concern: their interest in maintaining their residence, in the long term, at Lafayette Square.”). Tenants had to be notified of the right to challenge the condemnation.

The Ninth Circuit, in striking contrast, ignored the difference between the initial taking and the continued retention; it ignored the difference between getting your vehicle back in a few hours for a few dollars and losing your vehicle for at least thirty days, often permanently, having to pay thousands, and possibly losing your job. It found that it wasn't even necessary to inform owners they could challenge the continued retention, or offer “mitigating

circumstances,” or what the agency considered “mitigating,” even though the continued retention is exponentially more devastating than the initial taking.²²

In addition, the Ninth Circuit found that the “hearings” required for 30-day impoundments were the same as those for short — less than a day — community-caretaking based removals. In other words, because an off-the-record chat with an officer sufficed where a vehicle was towed for a short time due to illegal parking, it was also enough for punitive 30-day impoundments.

The Ninth Circuit’s conclusion that the “hearings” were adequate also conflicts with *Krimstock*

²² Implicitly acknowledging that the CHP-180 half-sheet did not provide notice of any opportunity to challenge the 30-day impoundments or to present “mitigating circumstances,” Respondents argued, relying on *City of West Covina v. Perkins*, 525 U.S. 234, 241 (1995), that “no notice is required for hearing rights ‘established by published, generally available state statutes and case law,’” and the district court agreed. **Apx A21.**

The conclusion that “no notice is required for hearing rights ‘established by published, generally available state statutes and case law,’” presents another circuit conflict.

The Eleventh Circuit rejects the view that “notice” of the right to a hearing found in a statute satisfies due process. *Grayden*, 345 F.3d at 1244 (“*West Covina* does not stand for the converse proposition that statutory notice is always sufficient to satisfy due process”); *Arrington*, 438 F.3d at 1352 (“there is no presumption that all of the citizens actually know all of the law all of the time ... [and] citizens must educate themselves about the law before they can wield the rights dedicated to them under it”).

and *Smith*. As in virtually all forfeiture proceedings, *Krimstock* and *Smith*, like *Bennis*, provided for a formal judicial hearing. In addition, *Krimstock* required that “plaintiffs be afforded a prompt post-seizure, pre-judgment hearing before a neutral judicial or administrative officer to determine whether the City is likely to succeed on the merits of the forfeiture action” *Krimstock*, 306 F.3d at 67. Both *Krimstock* and *Smith* appeared to assume the “pre-judgment” hearing would be before a judicial officer, certainly not an off-the-record conversation with a police officer employed by the impounding agency having a pecuniary interest in the impoundment. *Krimstock*, 306 F.3d at 70 (“the retention hearing will allow the court to consider whether less drastic measures than continued impoundment, such as a bond or a restraining order, would protect the City's interest in the allegedly forfeitable vehicle during the pendency of proceedings.”); *Smith*, 524 F.3d at 838-839 (“We do not envision lengthy evidentiary battles which would duplicate the final forfeiture hearing.”).

It is absurd to think that an informal chat with a police officer employed by the adversary with an interest in the outcome is all that is required where the “private interest” is the loss of one’s property for thirty days, and often permanently, to “punish” the owner. See *United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994).

V. The Court Should Require Courts of Appeals to Address Issues Presented.

It is critically important for the administration of justice that courts exercise the jurisdiction conferred upon them. Refusing to do so is far worse than merely being wrong.

Consequently, the Ninth Circuit should be required to address Petitioners' takings claims. 28 U.S.C. § 1291; *see Elder v. Holloway*, 510 U.S. 510 (1994).

The Ninth Circuit's claim that Petitioners' takings claims were "not supported by any developed argument" **Apx A7**, is baseless.²³ Litigants should not be punished for respecting requests that briefs be brief.

The only real issue was whether taking Petitioners' vehicles was lawful. Obviously, that issue was adequately briefed, for Petitioners prevailed in substantial part.

That taking private property without lawful authority constituted a Fifth Amendment taking appeared a no-brainer.

The district court had ruled that, absent lawful authority, taking Petitioners' vehicles was a Fifth Amendment taking. **Apx A49-52**. And Respondents

²³ Compare *Baldwin v. Reese*, 541 U.S. 27, 32 (2004).

did not disagree with Petitioners' contention that taking private property without lawful justification constitutes a Fifth Amendment taking.

To support their contentions that **"To Take Private Property, State Officials must Have Lawful Authorization; Otherwise, the Taking Violates the Fifth Amendment."** **Apx C3**, Petitioners cited *Schneider v. County of San Diego*, 285 F.3d 784, 788 (9th Cir. 2002). The County had taken Schneider's vehicles without lawful authority. The Ninth Circuit held that "Schneider was entitled to judgment as a matter of law on his . . . takings claims" *Schneider*, 285 F.3d at 788. Petitioners also cited *Armendariz v. Penman*, 75 F.3d 1311, 1320-21 (9th Cir.1996) (*en banc*). In holding that Schneider was entitled to judgment as a matter of law on his takings claims, the only case the Ninth Circuit cited was *Armendariz*.

Besides repeating their losing argument that no takings occurred because section 14602.6 (a) authorized the 30-day impoundments (CB 51-52), Respondents had nothing to add except brief, poorly supported and illogical contentions that Petitioners' takings claims were not "ripe," and that the Takings Clause is inapplicable to police. (CB 85-86.)

Petitioners In their Reply Brief pointed out that Respondents did not dispute Petitioners' contention that impounding Petitioners' vehicles for thirty days, without legal justification, was a compensable taking, **Apx C5**, and explained why each of Respondents' other contentions was meritless. **Apx C5-C7**.

For the Ninth Circuit to reject Petitioners' takings claims because Petitioners supposedly argued their takings claims only "in passing" is not only wholly incorrect; it is also prejudicial in the extreme. Respondents maintain that "two absolute immunities" foreclose any relief under California law. CB 47. Consequently, the Ninth Circuit's refusal to consider Petitioners' federal takings claims may deprive Petitioners of any remedy whatsoever.

It is true that the nationwide controversy about immigration touches this case. Call it patriotism or xenophobia, many think that everything possible should be done to make life miserable for those labeled "illegal aliens" or "undocumented workers," depending on one's views. Targeting those who drive without proper licensing accomplishes this end because many jurisdictions, like California, no longer issue licenses without proof of lawful residency. Courts understandably may not relish being thrust into such controversies. But that is no excuse for those charged with the constitutional obligation of resolving constitutional cases and controversies to avoid that responsibility because of real or imagined public relations concerns.

CONCLUSION

This case should not be passed over simply because the Ninth Circuit chose to dispose of Petitioners' claims by "memorandum." Important matters sometimes are unpublished. *E.g.*, *Ricci v. Destefano*, 264 Fed.Appx. 106 (2nd Cir. 2008); opinion withdrawn and superceded by *Ricci v. DeStefano*, 530

F.3d 87 (2nd Cir 2008); reversed *Ricci v. DeStefano*, * U.S. *, 129 S.Ct. 2658, 174 L.Ed.2d 490 (2009).

Since January 1, 2007, Ninth Circuit memoranda may be cited as authority. Ninth Circuit Rule 36-3 (b). Consequently, although memoranda are not “published” nor deemed precedential, in many cases there is little practical difference between opinions and memoranda. All are equally available using Westlaw, Lexis and other sources.

This case not only involves California’s most important law enforcement agencies and was nominally a class action against every law enforcement agency in California. *Salazar* impacts the people in the largest circuit in the country, including states with similar legislation. See Arizona Revised Statutes § 28-3511.

The California Attorney General’s Maywood Report showed the corrosive effect of these illegal impoundments. “Where an enforcement priority is motivated by the desire to raise revenue, allegations of corruption may arise, as occurred here.” Maywood Report at 11.

Petitioners are neither illegal aliens nor unlicensed drivers. They are (or were, since many lost their vehicles) the lawful and licensed owners of valuable private property, which they needed to go to work, to the doctor, and to take their children to school, and which Respondents took from them without lawful authority. Even if Petitioners — poor, working class people like those whose sweat and blood built this

country — erred in permitting others to use their property, that does not mean they forfeited all constitutional rights. And Petitioners need the Constitution to mean something more than most, for they have neither moneyed interests nor powerful lobbies in their corner.

Obviously, a penchant for discrimination against “others” does not justify what occurred here, as the Court through history has recognized, albeit sometimes with difficulty. *See e.g., Brown v. Board of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483, (1954) (Blacks); *Ex parte Endo*, 323 U.S. 283 (1943)(Japanese); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (Catholics); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (Germans); *Yick Wo*, 118 U.S. 356 (Chinese).

The Ninth Circuit’s dismissive refusal to consider that California’s rotten scheme for taking private property “disproportionately affects minorities and low income families,” because Petitioners “did not allege or argue any claim of equal protection violation,” **Apx A5**, was egregiously wrong. Petitioners were, supposedly, entitled to due process of law, and the importance of Petitioner’s “private interests” should not have been completely ignored.

Due process protections extend to all those within the territorial jurisdiction of the United States. *See, e.g., Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Disconto Gesellschaft v. Umbreit*, 208 U.S. 570, 578 (1908); *Rasul v. Bush*, 542 U.S. 466, 468 (2004).

Petitioners are only “little guys,” but they “should win,” because that’s what the “Constitution says.”²⁴

For the foregoing reasons, Petitioners urge the Court to grant this petition for *certiorari*.

Respectfully submitted,

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²⁴ http://www.msnbc.msn.com/id/9175162/ns/us_news-the_changing_court/t/roberts-no-room-ideologues-bench/#.TlFvBF3l-nA